

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

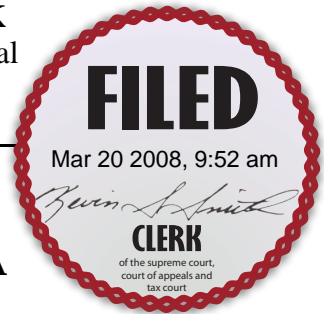
ATTORNEY FOR APPELLANT:

ANTHONY S. CHURCHWARD
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

KURTIS A. GUHL,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)

No. 02A05-0708-CR-481

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0610-FB-212

March 20, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kurtis A. Guhl appeals the fifteen-year sentence imposed following his conviction for Robbery,¹ a class B felony. While Guhl posits his argument as an attack on the appropriateness of the sentence, in fact, he challenges the weight the trial court assigned to various aggravating and mitigating factors it found at sentencing. Because we no longer review the weight that the trial court assigns to aggravating and mitigating factors when imposing a sentence, the trial court cannot be said to have abused its discretion on this basis. Nonetheless, after reviewing the appropriateness of the sentence pursuant to Appellate Rule 7(B), we conclude that it is not inappropriate in light of the nature of the offense and Guhl's character. Thus, we affirm the judgment of the trial court.

FACTS

On August 16, 2006, while Guhl was on probation for prior offenses, he entered a restaurant owned by Kathy Enterline and took money from her after threatening her with a toy handgun. The State charged Guhl with class B felony robbery on October 11, 2006, and he pleaded guilty to that offense on July 23, 2007.

The trial court held a sentencing hearing on August 13, 2007. At the time of sentencing, Guhl had been previously convicted of seven felonies and one misdemeanor. The trial court found two aggravating factors—Guhl's criminal history and his failed prior attempts at rehabilitation—and one mitigating factor—his guilty plea. The trial court sentenced Guhl to fifteen years imprisonment, and he now appeals.

¹ Ind. Code § 35-42-5-1.

DISCUSSION AND DECISION

A person who commits a class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentencing being ten years. Ind. Code § 35-50-2-5. While Guhl acknowledges that his criminal history is a valid aggravating factor, he emphasizes that three of the felony convictions the trial court relied upon occurred after the date of the underlying offense. On appeal, Guhl argues that “convictions that arise after the date of the present offense should not carry the same weight as true prior convictions.” Appellant’s Br. p. 9. Additionally, Guhl contends that the trial court “should have provided greater weight to Mr. Guhl’s acceptance of responsibility [shown by his guilty plea].” Id.

Initially, we note that there is no authority for Guhl’s contention that convictions obtained after the date on which the underlying offense occurred but before sentencing should not receive the same weight as convictions obtained before the date on which the underlying offense occurred. Furthermore, while Guhl posits his argument as an attack on the appropriateness of his sentence, in fact, he challenges the weight the trial court gave to his criminal history and guilty plea. Pursuant to our Supreme Court’s opinion in Anglemyer v. State, Guhl’s challenge fails. 868 N.E.2d 482 (Ind. 2007) (holding that the relative weight or value assignable to aggravating and mitigating factors properly found is not subject to review for an abuse of discretion).

Nonetheless, we may review and revise a sentence authorized by statute if we find the sentence to be inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Regarding the nature of the offense, Guhl

entered a restaurant wearing a black ski mask and demanded money from the owner with a toy handgun. We do not find Guhl's sentence to be inappropriate in light of the nature of the offense. Turning to his character, we agree with the trial court that Guhl's frequent criminal activity shows his disregard for the law. Furthermore, Guhl was on probation at the time he committed the underlying offense, further exposing his less-than-admirable character. Therefore, we do not find the fifteen-year sentence to be inappropriate in light of the nature of the offense and Guhl's character.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.